Unsealed per order of 4/7/08.

FILED

SEP 18 2006

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY EF DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>Lourdes VARGAS-Islas (1)<br>Rosa ISLAS-Contreras (2)<br>Rosa VARGAS-Islas (3)<br>Material Witnesses. | Magistrate No. '06 mg 8715<br>**MATERIAL WITNESS COMPLAINT**<br>**Title 18, United States Code, Section 3144**<br>~~FILED UNDER SEAL~~ |

The undersigned complainant being duly sworn states:

On or between August 29, 2006, to the present, the above-referenced material witnesses did witness and observe the criminal activities of Antonio MORALES-Barrios and FNU LNU, AKA: "Rafa", at 932 E. Second Street, Calexico, California. Antonio MORALES-Barrios and "Rafa" are targets involved in an ongoing investigation involving the narcotics tunnel that was discovered at 932 E. Second Street, Calexico, California, on September 15, 2006, following the execution of a federal search warrant.

As further detailed in the attached affidavit, the testimonies of Lourdes VARGAS-Islas, Rosa ISLAS-Contreras and Rosa VARGAS-Islas are material in a criminal proceeding and the affidavit shows that it may be impractical to secure their presence by subpoena pursuant to Title 18, United States Code, Section 3144. On September 15, 2006, material witnesses Lourdes VARGAS-Islas, Rosa ISLAS-Contreras and Rosa VARGAS-Islas indicated that they have stable residence in Mexicali, Baja California, and they possess Border Crossing Cards allowing them to enter into the United States. However, given their ties to the targets of this investigation, their travels in and out of the target residence at 932 E. Second Street, Calexico, combined with the discovery of the tunnel at 932 E. Second

Street, Calexico, California, it is highly unlikely that they will appear for future court proceedings, such as a grand jury proceeding, which is presently scheduled for Friday, September 23, 2006.

The affiant further alleges that their presence is required as material witnesses in order to testify before the grand jury and/or the criminal case against Antonio MORALES-Barrios and "Rafa" and others. Their presence is required as material witnesses in order to testify at a grand jury proceeding.

Therefore, the above referenced material witnesses are material witnesses under Title 18, United States code, Section 3144.

This complaint fully incorporates the attached affidavit.

DATED: September 18, 2006.

CLAUDIA E. HERZOG
Special Agent
U. S. Immigration & Customs Enforcement

SWORN AND SUBSCRIBED TO BEFORE ME THIS 18TH DAY OF SEPTEMBER, 2006.

PETER C. LEWIS
U. S. Magistrate Judge

# AFFIDAVIT

STATE OF CALIFORNIA )
COUNTY OF SAN DIEGO )

I, Claudia E. Herzog, declare under penalty of perjury, the following:

1. I am a Special Agent of the United States Immigration and Customs Enforcement, Special Agent in Charge in Calexico, California. I am assisting DEA Special Agent Richard Slattery and other federal, state, and local agencies, in connection with the tunnel investigation at 932 East 2nd Street, Calexico, California. On September 15, 2006, pursuant to a federal search warrant, a tunnel was found inside the residence as 932 East 2nd Street, Calexico, California. For several weeks, federal agents have been conducting an investigation of 932 East 2nd Street, Calexico, California.

(A) On August 29, 2006, surveillance agents observed a red Ford Explorer bearing license plate BDN2320 (hereinafter red Explorer) and a blue truck, bearing license plate 2X84648 (hereinafter blue truck) arrive at 932 E Second St, Calexico, California (hereinafter 932 E 2nd Street). The occupants of the red Ford Explorer left, which was followed by surveillance agents. Calexico Police Department made a stop of the red Explorer. The Calexico Police Officer identified the driver as Antonio Morales-Barrios and the front passenger as material witness Rosa Maria Islas-Contreras. The red Explorer was registered to material witness Lourdes Virgina Vargas-Islas. The occupants stated to the officer that they were traveling to El Centro, California to obtain a license to sell at the swap meet in Calexico, California. The red Explorer was released and continued north. Antonio Morales-Barrios, the driver of the red Explorer, began conducting counter-surveillance (heat runs, driving around blocks, etc) and going from town to town in

Imperial County before leaving for Mexico. He did not stop at the swap meet, as he told the officer. This is a driving method utilized by the driver is commonly utilized by individuals in an effort to determine if law enforcement is following them. The blue truck stayed behind at 932 E 2nd Street. The next day, on August 30, 2006, agents observed the occupants of the blue truck and the red Ford Explorer changed the locks to the door of 932 Second St.

2. On August 31, 2006, surveillance agents observed a white Ford Ranger bearing license plate BMX8183 arrived at the residence 932 E 2nd Street. Three unidentified males exited the vehicle and entered the residence. The vehicle left at a later time that day and has not been seen since.

3. During surveillance of 932 E 2nd St, agents observed the red Explorer arrived to the residence. In different occasions, agents observed three females (later identified as the three material witnesses) exiting the red Explorer and entering the residence. On September 2, 2006, agents observed what appeared to be a yard sale being held at the residence. The three females were observed participating with the yard sale. They held additional yard sales on September 3, 2006 and September 9, 2006.

4. During the course of the surveillance, agents observed the blue truck and the red Explorer arrived and departed the residence at 932 E 2nd Street. On two occasions, agents attempted to follow the blue truck, but the driver of the blue truck was conducting counter surveillance (heat runs) to determine if he was being followed so the agents terminated surveillance.

5. On September 13, 2006, for the first time, the blue truck backed into the garage area of 932 E Second St. and it appeared that the individuals were loading something into the truck. Then, the blue truck pulled out and then placed miscellaneous items on top of the blue truck. Agents attempted to follow the blue

truck, but the surveillance team lost sight of the truck based on the driver's counter surveillance driving.

6. On September 15, 2006, the agents saw the blue truck again. The blue truck backed halfway into the garage at 932 E Second St. Agents observed an individual loading items into the blue truck. The blue truck then pulled out of the garage and parked on the driveway and proceeded to place same miscellaneous items on top before leaving the residence. The driver of the blue truck drove to the swap meet and immediately left swap meet. The driver of the blue truck left the swap meet followed by the surveillance agents, who noticed that the driver of the blue truck was conducting counter-surveillance and appeared to have spotted the surveillance. Calexico Police Department made a stop of the blue truck and immediately noticed the odor of marijuana emanating from the blue truck. Agents found 100 packages of marijuana (weighing approximately 1143 pounds) inside the bed of the blue truck, covered by a tarp. The driver, Jesus Bernardo Aguila-Agundez, was arrested and confessed to transporting marijuana from the swap meet. I believe that the individuals at 932 E Second St. loaded the marijuana that was smuggled through the tunnel at 932 E Second St.; then the driver of the blue truck drove it to the swap meet to be picked up by another courier. That courier, in this case, Jesus Bernardo Aguila-Agundez. By having another courier pick up the drug-laden truck at a separate location (such as the swap meet) away from the tunnel's location, the traffickers are able to protect the tunnel's location without exposing it to the couriers. However, all three material witnesses in this case were intentionally allowed to enter the residence at 932 E. Second Street by the individuals operating the residence.

6. On September 15, 2006, the red Explorer and three females now fully identified as Lourdes Vargas-Islas, Rosa Vargas-Islas and Rosa Islas-Contreras

applied for entry at the Calexico, California East Port of Entry. Agents were notified and responded. Agents had not yet executed the search warrant at 932 E. Second Street had not yet occurred.

*__Interview of Lourdes Vargas-Islas (hereinafter Lourdes Vargas)__*

(A) Lourdes Vargas, date of birth 12/28/1975 was in possession of a valid Border Crossing Card that was issued on 3/22/2000. Lourdes Vargas claimed that she was going shopping to Calexico, California. Lourdes Vargas stated that Antonio Morales-Barrios, who was identified by agents as one of the individuals frequenting the residence at 932 E. 2nd Street, was her boyfriend of two months and that she had visiting him at 932 E 2nd Street. Lourdes Vargas stated that she has known Antonio Morales-Barrios for some time and in 2001, Antonio Morales-Barrios transferred/sold her a taco stand.

(B) Lourdes Vargas stated that she has spent three nights at 932 E 2nd Street. with Antonio Morales-Barrios. Antonio Morales-Barrios has been renting the residence for about fifteen days. Lourdes Vargas added that she was in possession of keys for the residence. Lourdes Vargas stated that she never saw anybody but Antonio Morales-Barrios in the residence. Lourdes Vargas further stated that one room located at the rear of the residence was locked. Lourdes Vargas indicated the layout of the residence by drawing on a piece of paper. The layout of the residence consisted of a living room and dinning room located on the north side of the residence. Two bedrooms located on the west side of the residence, a hallway between the kitchen and the third bedroom located on the east side of the residence. A garage on the east side of the residence that included what appeared a wall and/or space in the middle section. Lourdes Vargas further stated that Antonio Morales-Barrios previously lived in Colonia Alianza in Mexicali, Baja California. Lourdes Vargas stated that Antonio Morales-Barrios owns and drives the blue truck.

Lourdes Vargas stated that they utilized Antonio's blue truck and the red Explorer to move furniture that was purchased at the swap meet into the residence. [Agents believe, based on the stop of the blue truck on September 15, 2006 containing 1,143 pounds of marijuana, that the swap meet is the location where they switched drivers of the drug-laden vehicle to minimize exposure of the tunnel at 932 E. 2nd Street.]

(C) Lourdes Vargas further mentioned that she saw an individual only known as "Rafa" twice in the residence. "Rafa" spent most of the time inside the locked room. Lourdes Vargas stated that in one occasion she smelled the odor of marijuana and that she believed "Rafa" was smoking marijuana. Lourdes Vargas further stated that her mother Rosa Islas-Contreras talked to "Rafa" and "Rafa" mentioned that he had been in the residence for about five months.

(D) Lourdes Vargas stated that sometimes she heard Antonio Morales-Barrios talking to "Victor" via cellular phone utilizing the direct connect mode. Lourdes Vargas stated she never saw and/or met "Victor".

(E) Lourdes Vargas stated that about fifteen days ago "Rafa" left the residence and returned to Mexicali, Baja California to see his child. Lourdes Vargas described "Rafa" as a Hispanic male approximately 24 to 27 years of age.

*__Interview of Rosa Vargas-Islas (hereinafter Rosa Vargas)__*

(F) Rosa Vargas, date of birth 07/28/1986 was in possession of a valid Border Crossing Card that was issued on 05/08/2002. After waiving her rights, Rosa Vargas claimed that they were going to the store to buy supplies for the taco stand. Rosa Vargas stated that she met her sister's Lourdes' boyfriend, known as "Tono" about one and one half months ago. Rosa Vargas stated that she went to the residence 932 2nd Street and she went into the residence about two or three time and one time she used the restroom. Rosa Vargas stated that her father Jose Luis Vargas owns a white Ford Ranger and he visited the residence one time.

***Interview of Rosa Islas-Contreras (hereinafter Rosa Islas)***

**(G) Rosa Islas, date of birth 11/26/1956 was in possession of a valid Border Crossing Card that was issued on 05/08/2002. After waiving her rights, Rosa Islas claimed that she had been at the residence 932 E Second St. several times and that the residence is being rented by "Tono", her daughter's Lourdes' boyfriend. Rosa Vargas stated that they utilized "Tono's" blue truck and the red Explorer to move furniture into the residence. Rosa Islas stated that when she was at the residence she very little, meaning not a lot of furniture. Rosa Islas further stated that her husband Jose Luis Vargas owns a white Ford Ranger and he visited the residence one time.**

**AUSA Hobson has informed me that she is scheduled for grand jury testimony on September 21, 2006.**

**Because of the information contained in this affidavit, I am requesting that the affidavit be sealed (and not disclosed to the public).**

Executed on 09/17/06 (date) at 1300 (time)

[signature]
SPECIAL AGENT

Based on the information contained in the affidavit, I find that the testimonies of the has been shown that it may be impractical to secure their presence by subpoena pursuant to Title 18, United States Code, Section 3144.

It is further ORDERED that the affidavit be sealed in light of the information contained therein.

VARGAS
ISLAS

ISLAS
CONTRERAS

DATE/TIME 9/17/06 3:15pm

THE HONORABLE ANTHONY J. BATTAGLIA
UNITED STATES MAGISTRATE JUDGE